IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWELFTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE GODA RAGHURAM

WRIT PETITION No.24375 of 1996

Between:

K. Ramakoteswara Rao, S/o.Late Lakshmaiah
aged 64 years, R/o Malakpet, Hyderabad.

..... PETITIONER

AND

1 The Managing Director, A.P. State Essential Commodities

Corporation Ltd., Ongole Division, Hyderabad.
2 The Joint Collector-cum-Ex-Officio Executive Director of

A.P.S.E.C. Corporation Ltd., Ongole.
3 The District Supply Officer-cum-Ex-Officio District Manager,

A.P.S.E.C. Corporation Ltd., Ongole.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an order or direction more particularly in the nature of a Writ of Mandamus declaring the demand made by the respondents in letter dt. 13-8-1996 and 5-10-1996 basing on the enquiry report and the orders passed in relation to it as null and void not to recover Rs.34,190-34 as directed by them.

Counsel for the Petitioner : MR.GOURI SHANKAR SANGHI

Counsel for the Respondent No.3 : MR.M.B.THIMMA REDDY

The Court made the following :

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O R D E R:

By the third respondent's proceeding dated 18-07-1996, the petitioner was informed that the 1st respondent had instructed that a Civil Suit should be filed against the petitioner for recovery of an amount of Rs.34,190.34 ps. towards the short fall in the stocks of rice, palmolin oil and wheat, which were seized from the Giddalur Co-operative Society, on noticing the variation in stocks in the godown of the said society.

2. By another proceeding of the third respondent, the petitioner was directed to pay the aforesaid amount immediately failing which action would be initiated against him for recovery of the amount under the Revenue Recovery Act, apart from, taking action as per Law.

3. The petitioner, entered service in the Revenue Department as a Lower Division Clerk in 1956, retired with effect from 31-07-1990 while working as a Superintendent in the office of the Commissioner, Land Revenue. On 29-07-1976, he was promoted as a Deputy Tahsildar and was also selected for appointment as a Tahsildar on 23-07-1984. He was thereafter posted as a Mandal Revenue Officer at Giddalur. He joined duty on 11-04-1985 after completing his training in the category of Tahsildar during the period 28-09-1984 to 10-04-1985. While the petitioner was working as a Tahsilfar/Mandal Revenue Officer, Giddalur, a surprise inspection of the Giddalur godown was made by the Joint Collector. Giddalur Co-operative Society is the wholesale stockist for distribution of essential commodities to fair price shop dealers

and it is required to maintain stock registers for distribution of stocks and sales, which are to be inspected periodically by Vigilance Inspector, Civil Supplies, and the Deputy Tahsildar, Civil Supplies. In the surprise inspection of the godown, large scale discrepancies and variations in the stocks of rice, palmolin oil, etc., were discovered. On the orders of the Joint Collector, the godown of the Society was sealed on 07-10-1995. By a proceeding dt.08-10-1995, the then Joint Collector ordered the Vigilance Inspector, Civil Supplies, to remove the seal of the godown and hand over the seized stocks to the Deputy Tahsildar, Civil Supplies. The seized commodity was later sold pursuant to Section 6-A of the Essential Commodities Act, 1955, proceedings. On the sale of the stocks, a shortage of 362-90.500 quintals of rice, was discovered.

4. Neither during his service from 1985 to 1990 nor thereafter was the petitioner sensitized as to what occurred regarding this incident. No notice or opportunity was given to him nor was any enquiry conducted in his presence.

5. It would, however, appear that some enquiry was initiated into the event by the respondents and the Inquiry Officer appeared to have quantified the loss on account of the shortfall at Rs.1,02,571/-. The responsibility for the loss was fastened on one Sri Chakrapani, Circle Inspector of Vigilance, Sri K.Ramakoteswara Rao, Ex.Mandal Revenue Officer, Giddalur, and the petitioner as the former Mandal Revenue Officer, Giddalur. The petitioner's share of the liability was determined at Rs.34,190.34 ps. On the basis of such ex-parte inquiry and determination, a notice dated 18-07-1996 was issued by the third respondent calling upon the petitioner to pay the amount. This was followed by another proceedings dated 05-10-1996 calling upon the petitioner to pay the amount, failing which action would be initiated to recover the specified amount under the provisions of the Revenue Recovery Act. Apprehending, coercive process under the Revenue Recovery Act and disclaiming any liability in Law, or at all, for the alleged loss occasioned to the respondent Corporation-the Andhra Pradesh State Civil Supplies and Essential Commodities Corporation Limited, the Writ Petition is filed seeking appropriate relief.

6. On behalf of the petitioner it is contended that he had retired on 31-07-1990 and

no enquiry was thereafter conducted after notice and opportunity to him, no charge memo was issued, no copy of the inquiry report was furnished and no opportunity was afforded to peruse any documents or records in support of the allegation regarding his involvement in the loss occasioned to the Corporation. The entire process is grossly violative of principles of natural Justice, patently, without jurisdiction, hopelessly barred by delay, latches and limitation and therefore, no proceedings could validly have been initiated against him.

7. The third respondent has filed a counter affidavit wherein it is admitted, though equivocally, that no proceedings were initiated against the petitioner either before or after his retirement.

8. It is admitted that the first intimation to the petitioner was by a notice dated 18-07-1996 which was initially returned unserved but was later served on him on 22-08-1996. The counter affidavit an exercise in prolific verbosity that does not meet the basic contention of the petitioner that the proceedings initiated against him are patently without jurisdiction and barred by delay and latches. The counter affidavit is silent as to the substantive and procedural legal basis on which the impugned demand is raised on the petitioner for payment of the money more than six years after his retirement from service. It is also not explained how the provisions of the Revenue Recovery Act could have been invoked on the basis of such an extravagant and illegal procedure. The patent illegality of the impugned orders is further aggravated by the irrelevant assertions in the counter affidavit.

9. The respondents are unable to satisfy this Court as to the substantive or procedural basis for the issuance of the notice dated 05-10-1996 containing the threat of initiation of coercive proceedings under the Revenue Recovery Act for recovery of an amount that has been arrived at by a patently illegal procedure and beyond the period of limitation for proceeding against the petitioner. The impugned order of the third respondent dated 05-10-1996 is abinitio, void, illegal and inoperative. The exercise of the power by the respondents in issuing the impugned order is without any legal basis and in clear and wanton violation of all fundamental and minimal norms in such matters. The action by the respondents constitutes

patently, arbitrary and illegal action.

10. On the analysis above, the Writ Petitioner is entitled to the relief as sought. The Writ Petition is allowed. The impugned orders are quashed. As the conduct of the respondents in issuing the impugned orders and further in justifying the same in the counter affidavit without any semblance of legal authority aggravates the abuse of official authority. It is open to the State Government to enquire into the administrative negligence involved in the delay in identifying the persons responsible for the alleged loss and the consequent injury to the public exchequer.

11. The Writ Petition is accordingly allowed with costs of Rs.2,500/- payable by the respondents jointly and severally to the petitioner within a period of two months from the date of receipt of copy of this Order.

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12-08-2004

prv

That Rule Nisi has been made absolute as above.

Witness the Honourable Sri Devinder Gupta, the Chief Justice on this the Thursday, the twelfth day of August Two Thousand and Four.

..... ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Managing Director, A.P. State Essential Commodities

Corporation Ltd., Ongole Division, Hyderabad.

2 The Joint Collector-cum-Ex-Officio Executive Director of

A.P.S.E.C. Corporation Ltd., Ongole.

3 The District Supply Officer-cum-Ex-Officio District Manager,

A.P.S.E.C. Corporation Ltd., Ongole.

4 The Secretary, Government of Andhra Pradesh,

Revenue Department, Secretariat, Hyderabad.

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